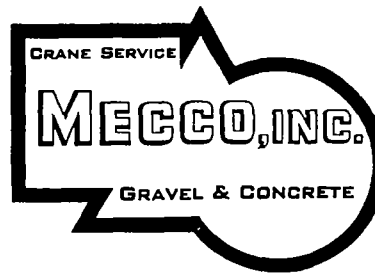




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BOX 368

MIDDLETOWN, OHIO 45042

PHONES (513) 422-3651

422-3781

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July 08, 1999

FOR SETTLEMENT PURPOSES ONLY
PROTECTED FROM DISCLOSURE UNDER F.R.E. 408

Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, IL 60604

RE: Skinner Landfill


Dear Ms. Estes:

As you may be aware, Mecco, Incorporated entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing for settlement of the Plaintiffs' claims regarding their past costs at the Skinner Site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between Mecco, incorporated and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the company's interests as are the terms of EPA's Model DeMinimis Consent Decree set forth in the December 7, 1995 Federal Register.

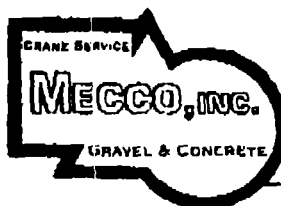
It is Mecco, Incorporated's understanding that EPA, Region V has now determined what information it will require in order to determine that Mecco, Incorporated qualifies for a de minimis settlement at this Site. That information consists of: (i) the summary of each de minimis settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de minimis settlor, as set forth in the Preliminary Allocation report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, The Final Allocation Report.

Accordingly, I am enclosing the information requested by EPA for Mecco, incorporated. I believe that this information amply demonstrates that Mecco, incorporated is entitled to a de minimis settlement consistent with EPA's model de minimis settlement decree. Mecco, Incorporated understands that EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by Mecco, Incorporated in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Mecco, Incorporated strongly urges EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's de minimis settlement policies, as well as provide needed funds for response action at the Skinner Site.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "David T. Morgan", written in a cursive style.

David T. Morgan,
President
Mecco, incorporated



Mecco, INC.

Box 42368 • Middletown, Ohio 45042-0368

Phone (513) 422-3651 • 422-3781 • Fax (513) 422-8746

Fax Transmittal Sheet

DATE: 8.23.99 SENDING TO: 312-886-7160

TO: _____

EPANUMBER OF
SHEETS6

INCLUDING THIS SHEET

ATTN: CRAIG MCELONIAMESSAGE: COPIES FROM ALLOCATOR'S REPORT FOLLOW

SENT FOR THE FOLLOWING REASON(S):

SENT BY: DAVID T. MINGO

- ☐ PROOF YOU REQUESTED
- ☐ FOR YOUR SIGNATURE
- ☐ FOR YOUR FILES
- ☐ FOR YOUR COMMENTS

- ☐ REPLY REQUESTED
- ☐ NO REPLY NECESSARY
- ☐ OTHER _____
- ☐ COPIES SENT TO _____

Please notify us immediately if transmission is not being properly received. Our machine is set up to receive copy 24 hours a day, 7 days a week.

Mecco, Inc.

Settlement Amount: **\$7,163.27**

Excerpt from Allocator's Preliminary Report :

Mecco is a sand and gravel, ready-mix concrete, crane and heavy equipment operations company which has emphasized the ready-mix concrete business since 1961, I was told. The Skinner log has two notations for Mecco in 1975: one for \$620.00 dated October 17, 1975 and one dated October 20, 1975 for \$374.00. The entries appear under the description "Income on trucking, hauling + etc. (to Dump)" but that designation does not mean that waste disposal did not occur. (By way of illustration, Morton International's log entry for 1974 was written under the same description but the hauling included 42 loads of material for disposal based on Skinner invoices produced by Morton.)

Mecco produced what it said were all of its accounts payable records which do not reflect payments to Skinner Landfill or payments in these amounts in October, November or December 1975. Mecco also produced its accounts receivables record for September 28, 1975 through the end of October 1975 to show that no payment by a customer matched the amounts appearing in the Skinner log.

The only checks written by Mecco to Skinner during the 1970s were to purchase salvage material, Mecco states. It found the following payments:

7/2/77	\$200.00 for sheet steel.
1/10/77	\$540.00 for tires and steel.
12/05/75	\$500.00 for wire cable.

Mecco also advises me that it interviewed employees all of whom deny taking any waste to the Skinner Landfill. Hence, Mecco concludes that it did send any waste to the Skinner Landfill.

There was considerable testimony on Mecco's relationship to the Site.

Rodney Miller testified that John Skinner worked on a paper company job in Franklin for Mecco. Rodney Miller was there himself at the Franklin job. He also said that he saw 5-6 cy dump trucks in the dump 25-40 times over 10 years. He described the trucks as green in color with the Mecco name on the side. *not true*

Maria Roy said that if Mecco was working in a place close by the Landfill, Mecco would use it for disposal. She said John Skinner dealt with a Mr. Lecil Townsend.

Lloyd Gregory recalled also that John Skinner worked with Mr. Townsend. He recalled a job in Franklin which contained cement vaults in the ground and generated a mud-like material. Insofar as he knew, this material was taken to the Site, he said. There were eight to ten loads of this material. He also said that he saw Mecco come in with waste at other times while he was working at the Landfill (in the late 1980s).

not true - we never had anything to do with the dump after John's death! (Oct 1982?)

Dexter Gregory confirmed his brother's recollection. As to waste disposal, he estimated that Mecco brought demolition waste to the Site one to two times a week for two years. He also remembered Mecco's trucks (orange cab, green hopper). *We never had truck so colored*

Elsa Skinner recalled Mecco, she said, because the man that runs it has the same name as her husband (David Morgan). She also recalled that Mecco held some of their *true* equipment after John died (there was, in fact, a dispute over this issue). She said that Mecco hauled in oil "one time in barrels, but I don't know what else they brought in." When asked about the number of barrels, she said, "All kinds of waste. No, sir, 'cause Albert said he didn't want any more of it, since John was working for him, you know." She did not know where the oil came from. She did not what the other wastes were. "I know they were there more than once. I don't know what year either. Had to be in the '80s, before the 80s." She then said that it "had to be around 1980 to '82" because John Skinner died in 1982. Elsa Skinner also testified that Mecco brought in "junk or scrap" and sludges. She did not know *not true* what the sludges were, just that it was "runny black stuff." She said that she went up "there to tell Albert something, and I saw it. That's when he told John he didn't want any more of it." E. Skinner Depo., p. 183, 403-405.

Ray Skinner testified that Mecco subcontracted out demolition work. He recalled the Logan Long work in Franklin, Ohio. Ray Skinner testified that some of the demolition debris from this job came to the Site. R. Skinner Depo., p. 250. He thought that Mecco was involved in a demolition job for Champion Paper. R. Skinner Depo., p. 250. Ray Skinner tied his brother's death to a time when he was doing a job for Champion Paper for Mecco. The evidence showed that John Skinner died while doing work at a facility in Franklin, but not a Champion Paper facility. Rather it was the Logan Long Roofing Co. plant, the demolition of which included the removal of paper machinery and demolition of a smoke stack, according to David Morgan of Mecco. *not true*

Later, Ray Skinner testified that Mecco subcontracted out demolition work with respect to a water treatment plant in Middletown and a sewage treatment plant. With respect to the water treatment plant, he placed the date of the work in 1982. Ray Skinner said that Lecil Townsend himself hauled some waste to the Site in drums, but he did not know what was in the drums. He did not disagree that the numbers of drums involved in this job may have reached 200 drums. He also said that 100 to 150 loads of lime were brought to the Site from the water treatment plant. With respect to the sewage plant, Ray Skinner thought that it was near the water treatment plant in the Franklin or Middletown area. He said that the facility was demolished and a near one constructed. He said that the waste included dried sewage sludge. There were eight to ten loads involved in this job (using a 20 or 30 cy dump truck). R. Skinner Depo., p. 319-28. *not true*
False
was demolished

In contrast with Dexter and Lloyd Gregory's testimony, Ray Skinner said that Mecco did not use the Site after his brother died. R. Skinner Depo., p. 328. On the other hand, he felt that Mecco hauled "in there several years before my brother passed away." By several, he meant, "at least seven to eight years." R. Skinner Depo., p. 329. He said that Mecco used 20 cy dump trucks and, sometimes, he thought that Mecco used dump trailers (60 to 70 cys). He personally saw Mecco bring in waste "a lot more than" once a year. He said it was "at least" once a month. R. Skinner Depo., p. 330. He recalled that John Skinner gave Mr. Townsend or Mecco a diesel station wagon. He also said that Mecco hauled in quite a bit of waste, later estimating the amount to be 100 loads per year. R. Skinner Depo., p. 331. He said that he saw the green trucks with orange lettering that said Mecco. *?*

I interviewed Lecil Townsend. He worked for Mecco from 1965 until 1996. He said he was familiar with its jobs as a foreman and the person apparently running the company. He said that he did not get a car from John Skinner. However, later, I received a letter from David Morgan of Mecco who said that Mr. Townsend did buy a diesel station wagon from John Skinner in 1980 and later sold it.

Mr. Townsend confirmed that Mecco did some grading work at the Middletown water treatment plant, but said that Mecco had nothing to do with hauling any material from the facility. He did not know whether anyone else did. He said he had never done any work at a Champion Paper facility or at a sewage treatment plant. The only demolition work he could recall was of some houses (10 - 15 houses, he said). He knew Albert Skinner and had been to the Landfill, but not to haul drums or any other waste.

From what Mr. Townsend told me, the only persons interviewed about the use of the Skinner site were drivers that related to the late 1980s. He did not talk with drivers from the 1970s. *not true*

The testimony of the witnesses and the statements of Mr. Townsend are irreconcilable. *???*

Mecco's President, David Morgan, wrote to me on June 11, 1998 to say that B.D. Morgan & Co., Inc. subcontracted with John Skinner to demolish the Logan Long Roofing Co. Who is B.D. Morgan & Co., Inc.? I was not told. I assumed that this entity is related to David Morgan somehow. I also noticed that in September and October 1975, just before the Mecco name appeared in the Skinner log, Mecco paid B.D. Morgan \$1,735.40 and \$25,561.76. Is it conceivable that the log entries relate to work for B.D. Morgan which Elsa Skinner assumed was Mecco? Every witness testified that the Logan Long work was for Mecco, but from what David Morgan said to me, it was, in fact, a subcontract job from B.D. Morgan, Inc., not Mecco. *are they related?*

Mr. Morgan also advised me that all of the waste debris from the Logan Long job was disposed of 1/4 mile to the dump site of Franklin Box Board Co. in Franklin, with permission from the proper authorities.

I am asked, in effect, to ignore the log entries (which Mecco says it cannot explain any more than I am to explain the absence of Skinner payments in the Mecco accounting documents) and the testimony and determine that Mecco never used the Site on the basis of its submittals to me which do not include any sworn statements. I cannot ignore the log entries and I cannot ignore the testimony. The tougher question is what to do about both. I will do the best I can on this record with the realization that a failure to settle this matter will likely lead to an expensive trial after expensive discovery for Mecco given the disputed issues of fact that exist here. *Don't sugar*

Waste-in Amount. I have decided to assign Mecco a waste-in amount for the Skinner log entries in 1975. I have decided to take one-half of the entries, \$310 (\$620 divided by 2) and \$187 (\$374 divided by 2) for a total of \$497. I am treating this figure as representing 17 loads (based on \$30 per load for a truck and driver using the 1974 invoices produced in the Morton file). I am treating each load as representing 11 cys (based on Ray Skinner's discussions of dump truck capacities including his brother's, Ray Skinner Depo., p. 786). Based on the log entries, therefore, I am assigning Mecco 187 cys of demolition debris.

To address the other testimony, I am assigning Mecco 125 additional cys. I derived this figure by multiplying 5 cys times 25 loads (from Rodney Miller), but I intend for this figure to cover the Ray Skinner, Elsa Skinner, Dexter Gregory, Lloyd Gregory and Rodney Miller testimony. The testimony produces a larger figure but weighed against it is Mecco's submittal and Mr. Townsend's interview statements which I am not able to discount in their

entirety and the conflict between Ray Skinner and the other witnesses regarding when Mecco used the Site.

In summary, Mecco has a waste-in amount of 312 cys of what I regard as demolition debris.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

name Of Party	Solid Waste in Cys	Liquid Waste in Gallons	Solid Waste In Total Cys 372806	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem- Dyne	Total
MECCO, INC. DWC	312	0	372806	0.0837%	262252	0.0000%	0.01%	0.00%			0.0837%